

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

BENJAMIN C. LEWIS,

§

Plaintiff,

§

v.

§

No. 3:08-CV-1855-L

DALLAS COUNTY JAIL, et al.,

§

Defendants.

§

ORDER

Before the court are the Findings, Conclusions and Recommendations of the United States Magistrate Judge, filed April 20, 2009. Plaintiff timely filed objections.

Plaintiff is proceeding *pro se* and *in forma pauperis*. He has asserted claims against Defendants Dallas County Jail, Dr. Ramona Leach, and Parkland Jail Health for violation of his constitutional rights pursuant to 42 U.S.C. § 1983. The magistrate judge recommends dismissing the action as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(i) because: (1) the claims against Dr. Leach are barred by the doctrine of *res judicata*; (2) the claims against Dallas County Jail are not claims against a governmental department; and (3) the failure to train claim against Parkland Memorial Hospital fails because Plaintiff has not shown that Dr. Leach violated his constitutional rights.

In his complaint in this action, Plaintiff purports to “reinstat[e] and reopen[]” civil action number 3:08-CV-0775-D, a case in which he sued Dr. Leach, Sheriff Lupe Valdez, Dallas County Judge Margaret Keliher, and four Dallas County Commissioners in their official capacities for the same injuries for which he seeks relief in this action. In the caption of his Objections, Plaintiff lists Defendants as “Dallas County, et al,” and in the body of this document Plaintiff states: “Defendants are [] [t]he City of Dallas, Parkland’s Jail Healthcare, and Dr. Ramona Leach as [a]mended on May 1, 2009.” Although Plaintiff never specifically named Dallas County as a Defendant in this case or in the

prior case, Plaintiff brought official capacity claims against several County officials, which is another way of suing Dallas County. To the extent Plaintiff attempts to revive or refile claims pleaded in civil action 3:08-CV-0775-D, he may not reopen or reassert them because those claims, which would include his claims against Dallas County, were dismissed with prejudice by the court on July 28, 2008, and are therefore precluded. Moreover, Plaintiff may not amend his pleadings through objections to a magistrate judge's report, and he has not sought leave to amend his complaint. Even if he did, however, the court determines that amendment would be futile. Accordingly, the court **overrules** Plaintiff's objections.

Having reviewed the pleadings, file, and record in this case, and the findings and conclusions of the magistrate judge, the court determines that the findings and conclusions are correct. The magistrate judge's findings and conclusions are therefore **accepted** as those of the court. The court therefore **dismisses with prejudice** Plaintiff's complaint as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(i).

It is so ordered this 11th day of May, 2009.



Sam A. Lindsay
United States District Judge